

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #8	CCRB Case #: 201503040	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/14/2015 6:38 PM	Location of Incident: Flatbush Avenue at Sterling Place	Precinct: 78	18 Mo. SOL 10/14/2016	EO SOL 10/14/2016	
Date/Time CV Reported Tue, 04/21/2015 2:07 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/21/2015 2:07 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kaz Daughtry	28690	940052	PBBN
2. An officer			Unknown
3. Officers			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Swicicki	21546	947528	084 PCT
2. AC Jeffrey Maddrey	00000	899501	PBBN

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers struck individuals with asps.	
B. POM Kaz Daughtry	Force: PO Kaz Daughtry used physical force against § 87(2)(b)	
C. An officer	Force: An officer used physical force against § 87(2)(b)	

Case Summary

On April 14, 2015, at approximately 6:38 p.m. (time established from NYPD Event § 87(2)(b) Board Review (BR) 1), on Flatbush Avenue at Sterling Place in Brooklyn, PO Kaz Daughtry of Patrol Borough Brooklyn North (PBBN) used physical force against § 87(2)(b) during a protest against police brutality (**Allegation B**). § 87(2)(b) was hospitalized for the injuries she sustained, and she was not arrested nor issued any summons. In the course of the investigation, the following was also alleged: Officers struck individuals with asps (**Allegation A**) and an officer used physical force against § 87(2)(b) (**Allegation C**).

This case was deemed sensitive as a result of the media coverage, § 87(2)(b). Video footage was obtained from § 87(2)(b) (BR 3), TARU (BR 4) and a witness, § 87(2)(b) (BR 5). Additional video footage was obtained from TARU (BR 6 and 7), but only that which addresses the incident was discussed in the report.

Mediation, Civil and Criminal Histories

- § 87(2)(b)
- This report was submitted pending the results of a FOIL request sent on September 6, 2015 (BR 8), for any notice of claim filed in regard to the incident.
- § 87(2)(b), § 87(2)(c)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by and involving § 87(2)(b) (BR 9), and the first CCRB complaint involving § 87(2)(b) (BR 10).
- PO Daughtry has been a member of service for 9 years and has had 35 CCRB allegations pled against him in 14 other cases (BR 11). In CCRB 200710793, the Board substantiated and recommended charges for allegations of a gun pointed and threat of force to which he pled guilty and the NYPD penalty was 10 vacation days. CCRB 200611436, CCRB 200707820, CCRB 200803281, CCRB 200804910, CCRB 200805678 and CCRB 201102469 collectively addressed 7 allegations of physical force that were closed with dispositions of exonerated (3), victim uncooperative (1), complainant uncooperative (1) and unsubstantiated (2).

Potential Issue

§ 87(2)(b) (BR 12) alleged that he witnessed officers strike at least four individuals involved in the protest with batons (addressed below in Allegation A). He did not know the individuals and did not know if they were arrested. According to the Daily News (BR 2), over 400 people were present at the protest. Without further information or evidence, the investigation could not identify or contact these individuals.

Additional Witnesses

- Twitter activity from § 87(2)(b) at the time of the incident § 87(2)(b) (BR 2). On May 7, 2015, the undersigned investigator spoke to § 87(2)(b) who represents § 87(2)(b) and § 87(2)(b). He said that § 87(2)(b) did not witness the incident, and arrived to the scene after § 87(2)(b) had been injured.
- Twitter activity from § 87(2)(b) at the time of the incident § 87(2)(b) (BR 2). On May 7, 2015, § 87(2)(b) provided a verified statement (BR 13) at which time it was determined that she did not witness the incident and arrived to the scene after § 87(2)(b) had been injured.
- § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were identified from arrest reports as individuals arrested on the date and in the vicinity of the incident location (BR 14). On May 5, 2015, the undersigned investigator spoke to § 87(2)(b) (BR 15), who said that he did not witness the incident. On May 19, 2015, the undersigned investigator received a voicemail from § 87(2)(b) (BR 16), the mother of arrestee § 87(2)(b) who is a minor, and stated that § 87(2)(b) did not witness the incident. Contact attempts were exhausted according to agency standards for the remainder of the individuals.

- § 87(2)(b) was identified from Event § 87(2)(b) (BR 1) as a 911 caller at the incident location. In her 911 call (BR 17), she requested an ambulance for an individual identified as § 87(2)(b). On May 20, 2015, the undersigned investigator received a voicemail from § 87(2)(b) (BR 18), who stated that she did not see what occurred and called 911 for an ambulance when she saw a female, identified as § 87(2)(b) lying on the ground in a fetal position.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) (BR 12) alleged that he witnessed officers striking at least four individuals with asps (addressed in Allegation A). § 87(2)(b) could not provide descriptions, names or badge numbers for any of the officers involved. As § 87(2)(b) could provide no descriptions of the officers, no photo array could be shown. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- § 87(2)(b) (BR 12) said that at the incident location, an officer punched him in the back of the neck (addressed in Allegation C). He did not see the officer who did this and could not substantively describe any of the four to five officers in the immediate vicinity at the time. He could not provide the names or badge numbers of these officers. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation A -Force: Officers struck individuals with asps.

§ 87(2)(b) (BR 12) alleged that just before the protesters reached the incident location, officers began chasing them off the street and onto the sidewalk. This was seemingly unprovoked. During this time, officers struck at least four people with batons. § 87(2)(b) did not know any of the individuals who were struck and did not know if any of them were arrested. § 87(2)(b) (BR 19), § 87(2)(b) (BR 13) and § 87(2)(b) (BR 20) did not allege this.

The Daily News coverage of the incident reported that over 400 individuals were involved in the protest (BR 2).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation B -Force: PO Kaz Daughtry used physical force against § 87(2)(b)

§ 87(2)(b) (BR 19) said that she attended the protest § 87(2)(b) was there to observe and record interactions, including arrests, between officers and civilians, but was not there to protest. She had been following the protest from the starting location of Union Square in Manhattan, and followed it over the Brooklyn Bridge. At the incident location, she observed an unidentified individual (name unknown), who walked ahead of her, being pursued by officers. The individual turned around against the flow of pedestrian traffic, at which time about four officers put him up against the wall of what was determined to be a Crunch

Fitness Center. The sidewalk was crowded and a couple bystanders watched what was occurring.

§ 87(2)(b) was the closest bystander to the individual getting arrested, and she could not estimate how far she stood. Suddenly, she realized that she was surrounded by officers, and many who were not apprehending the individual blocked off the walkway. She never interfered with the individual's arrest and never said anything to the officers. She never came closer to the individual who was being arrested, and there was no room to move anywhere. There was a lot of commotion, so she did not know if anyone was issuing instructions to her and she heard nothing specific. She could not hear who was saying what. She wanted to try to record the arrest of the individual because the situation felt vicious and excessive, given how many officers were apprehending him. Also, the officers kept pushing the individual's face back to the glass every time he lifted it, which seemed aggressive and rough to her.

§ 87(2)(b) reached for her pocket that carried her phone and before she could retrieve it, she felt a sudden push on her chest. Simultaneously, she heard, "Back, back back," to which she had no time to react. At the time, she held nothing in her hands. § 87(2)(b) did not know who pushed her. The force of the push took her off her feet and knocked the wind out of her. She fell to the ground and her back and the right side of her ribs landed onto a metal tree guard surrounding a tree. She lost consciousness and when she awoke, many people stood around her.

At § 87(2)(b), she received x-rays and CAT scans. She had bruising and swelling on her right ribs and side, and acute head trauma. There were cuts and bruises to her face around her right eye, although she was uncertain how she obtained these injuries. She had none of these injuries before the incident.

§ 87(2)(b) (BR 12) said that as the officers arrested the unidentified individual, an officer identified as PO Daughtry went toward an individual identified as § 87(2)(b). He recognized § 87(2)(b) from previous protests and did not think she was with any group. She did not interfere in the apprehension of the individual in any way and never physically threatened an officer. She stood closer to the street while the individual was closer to the building determined to be the Crunch Fitness Center. § 87(2)(b) then got punched (addressed in Allegation C) and when he noticed § 87(2)(b) again, she was on the ground. He did not see how she arrived there.

§ 87(2)(b) (BR 20), § 87(2)(b), filmed part of the unidentified individual's arrest from inside the gym. After he stopped recording and went outside, he saw an individual identified as § 87(2)(b) on the ground. He did not see how she arrived to the ground. § 87(2)(b) (BR 13) arrived after § 87(2)(b) was injured, and did not see her get pushed.

PO Daughtry (BR 21), who was driving Assistant Chief Jeffrey Maddrey of PBBN, said that he and Chief Maddrey were in and out of their vehicle as they aided with the protest. Around the incident location, they saw officers seemingly chasing protestors, which caused concern that something was happening. At Chief Maddrey's instruction, PO Daughtry travelled to the front of the group to determine what caused the commotion. At the incident location, Chief Maddrey told PO Daughtry to stop the car and exited the vehicle. PO Daughtry also exited the car and observed protestors throwing objects that included a plastic bottle, a glass object, a stick and a garbage can. The protest, which had been peaceful, seemed to be going awry at this point. PO Daughtry saw that Chief Maddrey had gone to help effect the arrest of the unidentified individual, whose name PO Daughtry never learned. Chief Maddrey walked quickly to where the individual was being arrested and took hold of him. Protestors began to come near Chief Maddrey, and officers continued to run around and chase people.

When PO Daughtry looked at Chief Maddrey again, he saw that Chief Maddrey was on the ground and did not know how he arrived there. Half of the protestors in the immediate vicinity ran in the direction of Chief Maddrey and the other half ran toward Sterling Place. About twenty other people were on the ground with Chief Maddrey seemingly trying to pull the arrested individual away from the officers. The people also grabbed the officers and said, "Leave him alone. Leave him alone. He didn't do anything." This took place near the window of the Crunch

Fitness Center. PO Daughtry pushed people back away from the glass window with his asp and said, "Please step back, step back, step back." No one listened to him. He heard an officer call for more backup, as not enough officers were present. Chief Maddrey then yelled to PO Daughtry, "My leg. My leg. My leg." PO Daughtry could not estimate his distance from Chief Maddrey at the time. PO Daughtry was scared for Chief Maddrey and uncomfortable at being in the middle of a mob while officers were on the ground. All the officers kept repeating the instructions for people to "get back," and no one listened. PO Daughtry issued this instruction himself fifteen to twenty times. PO Daughtry pushed five or six protestors in the chest or pulled them back from where the individual was being arrested.

PO Daughtry then encountered § 87(2)(b). He could not recall when he first became aware of her and was unfamiliar with her. As he instructed everyone to get back, he pushed § 87(2)(b) one time directly in her chest with his asp by holding it horizontally with his hands on either side. He could not recall how much time elapsed from when Chief Maddrey complained of his leg to when he pushed § 87(2)(b). He could not recall specifically telling § 87(2)(b) to get back, as he was telling everyone to do this. He could not recall § 87(2)(b) refusing to comply. He could not recall if she was one of the protestors who tried to grab the individual being arrested from the officers, but may have been one of the people he pulled back. § 87(2)(b) was one of the individuals who surrounded Chief Maddrey and was boisterously yelling and screaming (PO Daughtry could not recall what she said). PO Daughtry then saw § 87(2)(b) on the ground. He was unaware of her losing consciousness.

PO Daughtry pushed § 87(2)(b) to create space for the officers to effect their arrest. While the protestors including § 87(2)(b) were not attacking Chief Maddrey, they were inside his zone of safety and obstructing governmental administration by getting in the way and interfering with a lawful arrest. PO Daughtry used the minimum amount of force necessary when he pushed § 87(2)(b) to create more room for the officers.

When PO Daughtry viewed the TARU footage (BR 4), it was noted that the protestors in the immediate vicinity of where he stood were a good distance away from Chief Maddrey and the individual getting arrested. PO Daughtry said that he had already pulled those protestors, including § 87(2)(b) away from Chief Maddrey, and they were persisting in getting closer to the individual being arrested.

PO Joseph Swicki of the 84th Precinct (BR 22) was present at the time of the incident. After one of the protestors threw a bottle, officers apprehended this unidentified individual and others who tried to interfere with the arrest. At the incident location, three to four officers apprehended the individual who threw the bottle, and five to six officers arrested one of the individuals who tried to interfere in the arrest. The two arrests took place in close proximity to each other next to the Crunch Fitness Center. The situation turned into a large scuffle, with everyone on top of each other. During this time, Chief Maddrey was injured with pain to his leg or thigh. PO Swicki prepared the AIDED for Chief Maddrey, but did not know how he was injured. PO Swicki initially said that he was trying to subdue one of the individuals being placed under arrest, and later said he was only standing by in the event officers needed him. All the officers issued instructions for the protestors to get back, and some were noncompliant. Officers did a pretty good job of keeping people away, but protestors were right behind officers during the apprehensions. PO Swicki heard screaming and saw an individual identified as § 87(2)(b) lying on the sidewalk and screaming in pain for help. PO Swicki did not see how she landed on the ground. This was the first time PO Swicki saw her and did not see her interfering in the arrests or trying to get close to the apprehended individuals.

The AIDED report for Chief Maddrey prepared by PO Swicki (BR 23) stated that Chief Maddrey injured himself, complaining of pain to his hamstring, and received medical attention. PO Swicki also prepared the AIDED report for § 87(2)(b) (BR 24), which stated the following: § 87(2)(b) fell, causing injury to her ribcage. She received medical attention and was removed to § 87(2)(b).

Chief Maddrey (BR 25) said that he and PO Daughtry, his driver, were in and out of their vehicle as they assisted with the protest. After about an hour, they saw the unidentified individual (name unknown), fighting and directing people to fight. A plastic bottle was tossed in the air, and Chief Maddrey could not say who threw it. Chief Maddrey instructed PO Daughtry to stop the car, to help with the individual's arrest. The individual was apprehended very close to what was determined to be a Crunch Fitness Center. The individual was not being compliant at all and officers struggled with him on the sidewalk. At this time, he was unaware of § 87(2)(b).

Chief Maddrey felt many people near his back, and felt like he was in danger because of the hundreds of people present who wanted to hurt the officers. People tried to interfere with the arrest by screaming and yelling insults to the officers. The protestors were being disorderly by yelling and screaming, and blocking traffic. As Chief Maddrey was focused on the apprehension, he relied on the officers behind him to keep him safe. He did not see § 87(2)(b) nearby during this time, but his attention was focused on the individual being apprehended. PO Daughtry stood five to six feet away from Chief Maddrey, and did not know what he was doing. Chief Maddrey heard PO Daughtry say, "Get back," and "Move back."

In the course of struggling with the individual being arrested, Chief Maddrey hurt his leg. He called to PO Daughtry, who was at the time pushing people back to keep the crowd away from the officers. PO Daughtry was eventually able to come over and help Chief Maddrey up from the ground. At this time, he saw § 87(2)(b) on the ground and a female standing over her. He ordered officers to get help for her. Chief Maddrey did not see how § 87(2)(b) arrived to the ground and did not see PO Daughtry push her. Chief Maddrey recognized § 87(2)(b) from earlier in the protest as someone who was yelling and screaming, and threatened officers. § 87(2)(b) made many statements including, "We want to see dead cops." Chief Maddrey could not recall what else § 87(2)(b) said, but she was cursing and exhibited negative, rowdy and violent behavior. Chief Maddrey later said that he never saw § 87(2)(b) acting violently, but she was speaking threateningly. The first time Chief Maddrey saw § 87(2)(b) she was at the Brooklyn Bridge, and he saw her two or three times before the incident location.

A second AIDED was prepared for Chief Maddrey that included no reporting name of an officer and was reviewed by Lt. Patrick Steffens of PBBN (BR 26). It stated that Chief Maddrey injured his right leg while assisting an officer effecting a lawful arrest of an individual who resisted by flailing his arms, refusing to comply, creating a scene and attracting a large crowd.

The video from the Daily News (BR 3) shows the moment of the push. Protestors are seen facing the Crunch Fitness Center, but it cannot be determined how far away § 87(2)(b) was from the arrested individual or what she was doing beforehand. PO Daughtry pushes § 87(2)(b) seemingly on her left arm or shoulder area, and she falls backward onto her right side onto the metal tree guard.

The TARU (BR 4) video shows a large group of protestors and officers on the sidewalk near the Crunch Fitness Center. At the 00:04 minute mark, PO Daughtry pushes § 87(2)(b). From the camera's view, it can be seen that PO Daughtry stands to the left of the orange Crunch Fitness Center awning, under which the arrest was taking place. From this, the undersigned investigator estimated that PO Daughtry stood at least five feet away from the apprehension point. Also at 00:04, a female behind § 87(2)(b) also falls to the ground when § 87(2)(b) is pushed into her.

The video from § 87(2)(b) (BR 5) does not show the push, but shows the arrest from just inside the Crunch Fitness Center. The individual being arrested is on the outside of the window, although he is not seen because he is surrounded by several officers. At 00:16, the officers forming a protective perimeter around the apprehended individual can be seen. From 00:16 to 01:10, when the apprehended individual is lifted from the ground, no protestor is seen in the immediate vicinity of the arrest. The individual is then led away.

§ 87(2)(b)'s medical records from § 87(2)(b) (see Privileged Information folder) include the following information: § 87(2)(b) was feeling pain to her lower

rib cage and when she took a deep breath. She reported being pushed by an officer and falling into a tree guard around the tree. A small hematoma (defined as a solid swelling of clotted blood) was noted to her right temple. The differential diagnosis was noted as a fall, contusion and closed fracture. The diagnosis was a head injury and rib contusion. § 87(2)(b) was prescribed 600 milligrams of Motrin.

Officers may only use the minimum amount of force necessary to overcome resistance, Patrol Guide Procedure 203-11 (BR 27).

§ 87(2)(g)

§ 87(2)(g)

Allegation C -Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) (BR 12) alleged that after an officer identified as PO Daughtry went toward § 87(2)(b) four to five officers ran and approached to help in the arrest of an unidentified individual. During this time, one of the officers punched § 87(2)(b) squarely in the back of the neck with what felt like a closed fist. In his call to 911, § 87(2)(b) also said that an officer pushed him into a building (BR 28). As noted above, § 87(2)(b) did not see who did this and could not provide names, badge numbers or substantive descriptions of these officers. Neither § 87(2)(b) (BR 19) nor § 87(2)(b) (BR 13) alleged this.

No interviewed officer (BR 21, 22 and 25) acknowledged doing or witnessing this.

§ 87(2)(g)

Squad: 8

Investigator:	_____	<u>Leanne Fornelli</u>	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date